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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,987	02/06/2001	Michael Spencer	102636.58039US	3216

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CROWELL & MORING LLP  
INTELLECTUAL PROPERTY GROUP  
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WASHINGTON, DC 20044-4300

EXAMINER
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BORLINGHAUS, JASON M

ART UNIT	PAPER NUMBER
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3693

MAIL DATE	DELIVERY MODE
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08/20/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/777,987	<b>Applicant(s)</b> SPENCER ET AL.	
	<b>Examiner</b> Jason M. Borlinghaus	<b>Art Unit</b> 3693	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 May 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-103 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-103 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Preliminary Matters***

Examiner requests that Applicant disregard the Final Rejection mailed on 08/10/07, as such Final Rejection was accidentally submitted for mailing due to clerical error. Examiner contacted attorney of record, Stephen Palan, concerning this matter via telephone on 08/10/07.

The following Non-Final Rejection supercedes and replaces the previously mailed Final Rejection of 08/10/07.

Examiner apologizes for any inconvenience this clerical error has caused for Applicant.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1 – 103** are rejected under 35 U.S.C. 103(a) as being unpatentable over Lupien (US Patent 6,098,051) in view of Wiseman (US Patent 5,168,446), Brown (Brown, David L. & Bentley, Kassandra. *Getting Started In Online Investing*. John Wiley & Son. 1999. pp. 119 – 121), Finebaum (PG Pub 2002/0156719) and Official Notice.

**Regarding Claims 1 – 100**, Lupien discloses a method of trading financial instruments (futures, derivatives, options, bonds...), using a trading system computer apparatus (central matching controller); a plurality of client computer apparatus (trader terminals) located physically remote from each other and physically remote from the trading system computer apparatus; and a telecommunications network (wide area network and/or Internet) interlinking the trading system computer apparatus and the plurality of client computer apparatus (see col. 6, lines 26 – 67); the method comprising the steps of:

- (a) using at least one of the client computer apparatus to send to the trading system computer apparatus via a telecommunications network a plurality of offers for sale of financial instruments (sell orders of a particular stock). (see col. 4, lines 30 – 48);
- (b) using at least one of the client computer apparatus to send to the trading system computer apparatus via the telecommunications network a plurality of bids for purchase of financial instruments. (see col. 4, lines 30 – 48); and
- (c) using the trading system computer apparatus to establish a succession of time limited order entry periods (predetermined time intervals) during which

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offers for sale and bids for purchase can be submitted to the trading system computer apparatus. (see col. 24, lines 8 – 9);

- compare all offers for sale and bids for purchase made in a single order entry period at the end of the order entry period (batch processing at set times). (see col. 4, lines 62 – 64);
- to match at least some of the compared offers for sale and bids for purchase (see abstract);
- to record for each order entry period at least one benchmark trading rate (satisfaction density value) representing a price at which transactions involving matched offers for sale and bids for purchase are executed without review of said price by traders that submitted the matched offers for sale and bids for purchase. (see fig. 2; col. 7, lines 4 - 37);
- to make available electronically via the telecommunications network information regarding the offers or bids which have been matched (results of the matching process), such information for each matched pair of offer and bid being sent only to the traders who made the matched offer and bid (to the terminal at which the buyers and sellers enter their bids and offers) and such information including the benchmark trading rate set (price) for the transaction (see col. 24, lines 9 – 13);
- wherein each offer and each bid specifies a financial value (price) and the trading the trading system computer apparatus (anonymous matching system) when matching offers and bids initially attempts for each offer to find

a bid which is of exactly the same financial value and individually attempts for each bid to find an offer which is of exactly the same financial value (when matching events occur satisfying these criteria). (see col. 1, lines 54 – 63);

- wherein the trading system computer apparatus allocates to each offer and each bid a queue number allocating a priority to the offer or bid dependent on how soon after the start of an order entry period the offer or bid is made (time priority); and the trading system computer apparatus at the end of each order entry period compares bids and offers made in the order entry period by starting with the bid or offer with the earliest queue number (based upon time priority) and then comparing the bid or offer with later made bids or offers successively having reference to the queue numbers of the later made bids or offers and starting with the earliest later made bid or offer. (see col. 2, lines 1 – 9);
- wherein each offer for sale contains information regarding a financial value (price) of each financial instrument and a maturity date (date of maturity) of each financial instrument (debt instrument); each bid for purchase contains information regarding a financial value (price) of each financial instrument requested and a maturity date (date of maturity) of each financial instrument (debt instrument); and the computerised trading system matches bids and offers by matching the financial values and maturity dates of the bids and offers. (see abstract; col. 19, line 61 – col. 20, line 16); and

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- wherein the trading system computer apparatus (CMC) makes accessible to all the traders via the telecommunications network a record (price discovery output, such as through an aggregate density profile) for financial instruments in a plurality of maturity periods (per financial instrument). (see col. 12, line 5 – col. 13, line 9).

Lupien does not teach a method wherein electronically available information includes the identity of the traders responsible for each matched pair of offer and bid and; wherein each order contains information specifying whether the order must be accepted in full or whether the order can be accepted in part; wherein the system checks initially whether each order can be matched in full with an opposing order and when an order which can be accepted in part cannot be matched in full then the system will match the order with an opposing order of a lesser financial value and will calculate a remainder value; and the system attempts to match the remainder value of each order with remaining opposing orders; wherein each trader when making an offer or a bid specifies which other traders can be considered for a matching bid or offer and the apparatus considers the identities of the traders responsible for each potential pair of matched bid and offer and will match the pair of bid and offer only if each relevant trader has been specified as an acceptable trader by the other; nor wherein the apparatus makes accessible to all the traders a record of **how many bids and offers have been made in total by all traders** for financial instruments in a plurality of maturity periods. (emphasis added)

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Wiseman discloses a method of trading financial instruments (commodities), the method comprising the steps of:

- make available electronically via the telecommunications network information (local area network) regarding the offers or bids which have been matched (completed), such information for each matched (completed) pair of offer and bid being sent only to the traders (parties to the transaction) who made the matched (completed) offer and bid and such information including the identity of the traders (counterparties) responsible for each matched (completed) pair of offer and bid. (see col. 33, lines 8 – 21);
- wherein each trader (commodity trader) when making an offer or a bid specifies which other traders (counterparties) can be considered for a matching bid or offer and the trading computer apparatus considers the identities of the traders (counterparties) responsible for each potential pair of matched bid and offer and will match the pair of bid and offer only if each relevant trader (counterparty) has been specified as an acceptable trader (counterparty) by the other. (see col. 2, line 11 – col. 4, line 64).

Brown discloses a method wherein:

- each offer for sale/bid for purchase contains information specifying whether the offer/bid must be accepted in full (All or None) or whether the offer/bid can be accepted in part (Partial Fill); (see p. 120).

Finebaum discloses a method wherein:



- the computerized trading system checks initially whether each offer for sale/bid for purchase can be matched in full with a bid for purchase/offer for sale (full match) and when an offer for sale/bid for purchase which can be accepted in part cannot be matched in full then the computerized matching system will match the offer for sale with a bid for purchase/offer for sale of a lesser financial value (partial match) and will calculate a remainder value (face amount that did not trade in the 'pending state'). (see p. 20, para. 402 – 403); and
- the computerized trading system attempts to match the remainder value of each offer for sale/bid for purchase with remaining bids for purchase/offers for sale. (face amount remains in pending state until...the remainder of the order is matched by the system). (see p. 20, para. 402 – 403).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Lupien by incorporating the ability to specify acceptable traders for a transaction and conducting transactions only between said traders, as disclosed by Wiseman, in the specification of additional factors submitted as a portion of the submitted order, as disclosed by Lupien, to allow for development of a preferred trader network and the selecting of preferred trading partners.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Lupien and Wiseman by incorporating the ability for the order to contain information specifying whether the order must be accepted in full or whether it can be accepted in part, as disclosed by Brown, to allow for the use of a

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standard and conventional order specification utilized in investments. Such a standard order specification would thereby allow traders to indicate their trading preferences, such as whether their order must be accepted in full or may be accepted in part.

It would have been obvious to one of ordinary skill in the art at the time that the invention was made to have modified Lupien, Wiseman and Brown by incorporating the ability to match in full or, when not possible, in part, retaining the remainder value of the order for future matching, as disclosed by Finebaum, allowing for optimal execution of the orders, allowing for completion of orders in their entirety, when possible, and, when not, piece-meal.

Examiner takes **Official Notice** that making information available concerning the volume of market trading is old and well known in the art of the management of financial markets and financial market information systems.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Lupien, Wiseman, Brown and Finebaum by incorporating the dissemination of information concerning how many bids and offers were made by all trading parties as such is standard and conventional in the art of financial markets, allowing all trading parties to properly gauge market depth and market liquidity.

**Regarding Claims 101 - 103**, such claims recite similar limitations as claimed in previously rejected claims, would have been obvious based upon previously rejected claims, or are otherwise disclosed by the prior art applied in previously rejected claims. Such claim limitations are therefore rejected using the same art and rationale as

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previously utilized. Applicant is reminded that any argument contrary to such an interpretation is an indication of patentably distinct subject matter that may warrant a restriction requirement.

### ***Response to Arguments***

Applicant's arguments with respect to pending claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Borlinghaus whose telephone number is (571) 272-6924. The examiner can normally be reached on 8:30am-5:00pm M-F.

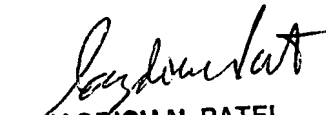
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JMB

August 6, 2007

  
JAGDISH N. PATEL  
PRIMARY EXAMINER